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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FOURTH INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES UP TO US$100,000 (CATEGORY "C" CLAIMS)

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Introduction

1. This report contains the recommendations to the Governing Council of the United Nations Compensation Commission (the "Commission") by the Panel of Commissioners (the "Panel") appointed to review individual claims for damages up to US$100,000 (category "C" claims"), pursuant to article 37(e) of the Provisional Rules for Claims Procedure 1/ (the "Rules"). These recommendations concern the fourth instalment comprising 71,703 category "C" claims submitted to the Panel by the Executive Secretary of the Commission, pursuant to article 32 of the Rules.

2. The Panel has reviewed the fourth instalment of category "C" claims in a continuum with the Panel's processing of the first three instalments of category "C" claims. This report should therefore be considered in conjunction with the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" and its annexes 2/ (the "First Report"), the Report and Recommendations Made by the Panel of Commissioners Concerning the Second Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" and its addendum 3/ (the "Second Report"), and the "Report and Recommendations Made by the Panel of Commissioners Concerning the Third Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)4/ (the "Third Report"), which have been approved by the Governing Council.5/ The fourth instalment has been processed on the basis of the considerations, precedents and determinations expressed in the First, Second and Third Reports, which the present report incorporates by reference.

3. This report reflects the work performed by the Panel since it issued its recommendations on the third instalment of category "C" claims. The Panel met with the Commission's secretariat at the secretariat's headquarters in Geneva on 16-17 October 1996. The Panel acknowledges the efficient work performed by the secretariat in connection with the Panel's review of the fourth instalment.

I. PROCESSING APPROACH AND SCOPE OF WORK

4. In its review of claims and in making its recommendations, the Panel has applied relevant Security Council resolutions, Governing Council decisions, the Rules, and other relevant principles and practices of

international law. In addition to the information presented in the claims, as in the case of previous instalments, the Panel has also taken into account the following: information accompanying the submission of the fourth instalment of claims provided by the Executive Secretary pursuant to article 32 of the Rules; additional information and views presented by Governments and international organizations, and by the Government of Iraq, in response to the reports presented to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules; and relevant United Nations and other reports.

5. In terms of defining the Panel's mandate, the Governing Council's decision 1 has particular relevance.6/ In this decision the Governing Council determined that category "C" claims, together with claims in categories "A" and "B", were considered to be "urgent" claims. Accordingly, decision 1 provides for the processing of these categories of claims "on an expedited basis" using procedures "such as checking individual claims on a sample basis, with further verification only if circumstances warranted."7/ Consistent with this decision, article 35 of the Rules states that documents and other evidence will be the reasonable minimum appropriate under the circumstances, with a more flexible evidentiary standard applying to claims for smaller amounts.

6. The First and Second Reports provide an extensive discussion of the considerations and preparations underlying the processing methodologies applied to the category "C" claims.8/ In view of the Panel's mandate, and in keeping with the "fast-track" processing approach applied to the second and third instalments of claims, wherein claims containing loss elements that may be processed through database-assisted techniques are resolved in their entirety, the application of statistical sampling and modelling techniques continues to form the basis for the fourth instalment of category "C" claims.9/ The Panel notes that, as explained in the Second and Third Reports, claims not meeting the "fast-track" processing criteria also require expedited processing and will be included in future instalments. However, given the large number of claims received in category "C", the Panel has determined that those claims that can be processed efficiently through database-assisted techniques will be addressed first.

II. CLAIMS INCLUDED IN THE FOURTH INSTALMENT

7. As noted in previous reports, the Governments of Kuwait and Egypt, who submitted the largest number of category "C" claims to the Commission,10/ were the only governments to submit claims in both paper and computer format.11/ The submission of claims in computer format has made the claims information for thousands of claimants from these two countries readily available on the Commission's database, thereby providing access to claims data that can thus be processed efficiently through the Panel's "fast-track" methodology. In view of the above, the fourth instalment includes 19,434 claims submitted by the Government of Egypt and 40,649 claims submitted by the Government of Kuwait.

8. In addition, the data entry of claims information by the secretariat for other submitting governments and international organizations as described in the Second Report 12/ is nearly complete, making additional claims available for processing by means of the Commission's "fast-track" methodology. Claims that have already been entered into the Commission's computer database,13/ and that present losses that lend themselves to processing by the Commission's "fast-track" methodology, have been included in the fourth instalment. The fourth instalment also includes corrections to some of the recommendations made in previous reports. These corrections were brought to the attention of the Executive Secretary by governments or international organizations pursuant to article 41(1) of the Rules.14/

9. The claims included in this instalment represent the losses most frequently suffered by category "C" claimants. They include losses claimed on the "C1" page for transportation, food, lodging, relocation and other related losses ("C1-Money" claims); losses claimed on the "C4" page for clothing, personal effects, household furnishings and other personal property-related losses ("C4-CPHO" claims);15/ losses claimed on the "C4" page for the loss or theft of motor vehicles ("C4-MV" claims);16/ losses claimed on the "C5" page related to bank accounts located in Kuwait;17/ and wages and salary losses claimed on the "C6" page of the claim form ("C6-Salary" claims).18/ Also included in this instalment are losses claimed by Kuwaitis on the "C1" page of the claim form for mental pain and anguish ("C1-MPA" claims)19/ related to forced hiding; C1-MPA claims submitted by nationals of Organization for Economic Cooperation and Development (OECD) countries related to forced hiding, hostage taking or illegal detention for more than three days;20/ and claims submitted by the Government of Egypt on

the "C6" page for mental pain and anguish related to the deprivation of all economic resources ("C6-MPA" claims).21/

10. During the processing of the fourth and previous instalments, the secretariat applied a special computer programme to perform cross-checks on the claims. The cross-check program performs a search on various combinations of available identifying information in order to exclude as much as possible any cross-category multiple recovery between category "A" (departure) claims and claims for departure submitted on the C1 page of the category "C" claim form. In the previous instalments, all detected matches were removed from the "fast-track" processing cycle. For the fourth instalment, however, in accordance with the Governing Council's decision on multi-category departure claims,22/ after confirming that claimants who filed individual or family claims in category "A" had also filed claims for departure losses in category "C", the secretariat has reduced the "C1-Money" departure claims accordingly.23/ This fourth instalment reports the adjusted recommended award amounts.

III. RECOMMENDATIONS

11. The Panel hereby presents the amounts recommended as compensation for 70,558 claims in the fourth instalment of category "C" claims. Totalling US$637,643,444.35, these recommended compensation amounts are listed in the summary table below for each Government and international organization included in the fourth instalment. Each Government and international organization will be provided with a confidential listing containing the individual recommendations made in respect of its claimants. The amounts recommended for compensation in the fourth instalment resolve these claims in their entirety. One thousand one hundred and forty-five claims in the fourth instalment of category "C" claims are not recommended for payment. The claims not recommended for payment relate exclusively to the following: C1-Money losses where recommended amounts are equal to or lower than the amounts previously approved by the Governing Council for the same claimants in category "A";24/ C5-Kuwait bank losses; and C6-MPA losses for Egypt.25/

Summary of Fourth Instalment Recommendations			
Country	Number of Claims Recommended for Payment	Number of Claims Not Recommended for Payment	Amount of Compensation Recommended (US$)
Algeria	2	-	23,763.09
Australia	8	-	122,481.32
Austria	2	-	28,397.02
Bahrain	1	-	20,328.64
Bangladesh	108	-	782,755.06
Bosnia & Herzegovina	1	-	43,231.56
Bulgaria	16	-	85,558.62
Canada	63	-	1,243,162.58
China	2	-	17,017.83
Croatia	4	-	23,009.59
Czech Republic	6	-	155,531.10
Denmark	9	-	219,836.74
Egypt	18,312	1,122	119,711,643.43
Ethiopia	22	-	64,316.37
Finland	1	-	9,300.00
Federal Republic of Yugoslavia (Serbia and Montenegro)	1	-	19,771.44
France	35	-	492,132.20
Germany	34	-	566,928.16
Greece	6	-	150,205.89
Hungary	8	-	123,238.70
India	5,869	6	44,834,752.51
Ireland	41	-	502,371.34
Italy	15	-	397,973.21
Japan	79	-	851,168.11
Jordan	2,385	15	23,857,531.37
Kenya	1	-	11,639.22
Kuwait	40,649	-	409,227,615.37

Summary of Fourth Instalment Recommendations			
Lebanon	14	-	260,004.42
Mauritius	8	-	25,647.68
Morocco	3	-	37,083.44
Nepal	1	-	4,028.09
Netherlands	3	-	89,825.20
New Zealand	4	-	79,478.21
Nigeria	2	-	6,969.03
Pakistan	1,245	-	11,801,874.79
Philippines	219	2	712,314.51
Poland	27	-	243,154.44
Senegal	1	-	4,505.19
Slovakia	4	-	60,003.67
Somalia	1	-	4,117.65
Spain	3	-	77,922.94
Sri Lanka	1	-	15,743.94
Sudan	1	-	11,750.74
Sweden	6	-	153,091.31
Switzerland	1	-	7,384.86
Thailand	12	-	49,748.52
Tunisia	12	-	156,314.93
Turkey	152	-	1,257,021.33
United Kingdom	705	-	13,005,244.53
United States	428	-	5,542,379.86
Yemen	9	-	185,816.11
UNDP Jerusalem	3	-	94,379.67
UNDP Kuwait	1	-	6,394.46
UNDP Washington	1	-	15,138.41
UNDP Yemen	4	-	57,578.34
UNHCR Canada	4	-	62,414.01

Summary of Fourth Instalment Recommendations			
UNHCR Geneva	2	-	21,249.45
UNRWA Vienna	1	-	9,204.15
Total	70,558	1,145	637,643,444.35

12. In accordance with procedures set out in article 41 of the Rules for the correction of award amounts previously reported in an instalment and approved by the Governing Council, the Panel, on the initiative of the Executive Secretary, recommends approval of corrected recommended amounts for seven claims from the first instalment. A confidential listing containing a revised breakdown of amounts in respect of individual claimants will be provided to the countries affected. The concurrent recommended changes per country are listed below:

FIRST INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
United Kingdom	5,329,138	5,322,359
United States	10,423,601	10,514,246
Federal Republic of Yugoslavia (Serbia and Montenegro)	661,219	616,860

13. Following checks to exclude cross-category multiple recovery,26/ the secretariat has, in cases of confirmed matches of category "A" claims and "C1" departure claims, made the appropriate deduction from the compensation awarded to the category "C" claimants.27/ Forty-two (42) claims submitted by the Government of Egypt that were previously reported in the second instalment and approved by the Governing Council were subsequently determined to be confirmed cross-category "A" and "C1" matches. A confidential listing containing a revised breakdown of amounts in respect of individual claimants will be provided to the Government of Egypt. The total recommended awards for the Government of Egypt have therefore been corrected as follows:

SECOND INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Egypt	132,012,193.12	131,970,764.32

14. The Panel is satisfied that the secretariat has used reasonable and practical means to detect the existence of duplicate claims. However, given the difficulty for the secretariat to identify each potential case of multiple recovery, the Panel recommends that similar checking procedures be implemented by all Governments and international organizations receiving lists of individual claimants in order to prevent instances of overpayment to their claimants.28/

15. With reference to the considerations on the subject of interest expressed in the First Report,29/ the Panel recommends that interest be awarded on the claims included in this fourth instalment of category "C" claims as of 2 August 1990.30/

16. These findings are without prejudice to the conclusions and findings of panels for other categories of claims. The Panel adopted this report, including the recommendations to the Governing Council, by unanimity.

Geneva, 16 October 1996

(Signed) Mr. L. Yves Fortier, Q.C.
Chairman

(Signed) Mr. Sergei N. Lebedev
Commissioner

(Signed) Mr. Philip K. A. Amoah
Commissioner

NOTES

1/ S/AC.26/1992/10.

2/ S/AC.26/1994/3.

3/ S/AC.26/1996/1 and S/AC.26/1996/1/Add.1/Rev.1.

4/ S/AC.26/1996/2.

5/ S/AC.26/Dec.25 (1994), S/AC.26/Dec.36 (1996) and S/AC.26/Dec.37 (1996).

6/ S/AC.26/1991/1.

7/ S/AC.26/1991/1, para. 8.

8/ See First Report, pp. 49-208 and Second Report, paras. 24-51.

9/ The "fast-track" processing approach is described in detail in the Second Report. See, in particular, paras. 8-14.

10/ Approximately 166,000 and 92,500 category "C" claims have been filed by the Governments of Kuwait and Egypt, respectively.

11/ Pursuant to article 7(2) of the Rules.

12/ See Second Report, para. 18.

13/ See Second Report, paras. 19-22.

14/ Article 41(1) of the Rules states that "[c]omputational, clerical, typographical or other errors brought to the attention of the Executive Secretary within 60 days from the publication of the decisions and reports, will be reported by the Executive Secretary to the Governing Council."

15/ See the discussion in the Second Report on the statistical modelling methodologies used in resolving C1-Money and C4-CPHO claims, at paras. 33-39.

16/ See the discussion in the Second Report on the C4-MV methodology, at paras. 40-41.

17/ See the discussion of "C5" bank accounts located in Kuwait in the Second Report, at paras. 42-43.

18/ See the discussion of the C6-Salary methodology in the First Report at pp. 168-194 and the Panel's review and analysis in the Second Report, at paras. 44-51.

19/ See the discussion in the Second Report on the methodology used in resolving C1-MPA claims. Second Report, paras. 25-32.

20/ See discussion of C1-MPA claims in the First Report, particularly with respect to the categories of persons considered to have been forced to hide on account of a "manifestly well-founded fear" for their lives or of being taken hostage or illegally detained, pp. 92-96.

21/ See Second Report, note 44.

22/ S/AC.26/Dec.24 (1994). See also S/AC.26/Dec.21 (1994) and S/AC.26/Dec.17 (1994).

23/ Pursuant to Governing Council decision 24 (S/AC.26/Dec.24 (1994)), any claimant who has filed an individual claim in category "A" and has also filed a claim for departure losses in category "C" may be compensated in category "C" only insofar as the amount of such losses is determined to exceed US$2,500. Any claimant who has filed a family claim in category "A" and has also filed a claim for departure losses in category "C" may be compensated only insofar as the amount of such losses is determined to exceed US$5,000.

24/ As a result of the application of Governing Council decision 24 (S/AC.26/Dec.24 (1994)) to these claims, the amount calculated under category "C" has been entirely offset by the category "A" awards and, therefore, no amount of compensation is recommended for these category "C" claims.

25/ In connection with the rejection of these claims, the Panel notes in particular that the claimants' asserted deprivation of all economic resources should be clearly observable from the claim form and the attached documents. See First Report, p. 194, Second Report, note 44, and Third Report, note 15.

26/ See discussion supra at para. 10.

27/ See S/AC.26/Dec.21 (1994) and S/AC.26/Dec.24 (1994).

28/ In the confidential reports that provide a breakdown of individual award amounts, governments and international organizations are requested to report to the Commission such instances that would result in overpayments to claimants.

29/ First Report, pp. 32-33.

30/ See also S/AC.26/1992/16.